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No. 204

# In the Supreme Court of the United States

OCTOBER TERM, 1954

SOCIETY FOR SAVINGS IN THE CITY OF CLEVELAND,
APPELLANT

*v.*

STANLEY J. BOWERS, TAX COMMISSIONER OF OHIO

*ON APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO*

## BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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## BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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### OPINIONS BELOW

The entry of the Board of Tax Appeals, State of Ohio (R. 18-30), is not reported. The opinion of the Supreme Court of Ohio (R. 30-53) is reported at 161 O. S. 122.

### JURISDICTION

The judgment of the Supreme Court of Ohio was entered on March 10, 1954. (R. 53.) An application for rehearing was seasonably filed and

was denied by order dated March 31, 1954. (R. 54.) The petition for allowance of an appeal was allowed June 3, 1954. (R. 1.) This Court, by order of October 14, 1954 (R. 54), noted probable jurisdiction, and by order dated January 31, 1955, substituted Stanley J. Bowers as the appellee in place of John W. Peck, formerly Tax Commissioner of Ohio. The jurisdiction of this Court to review the decision below by appeal is conferred by 28 U. S. C., Section 1257(2).

### QUESTION PRESENTED

Whether the Ohio intangible property tax, which is measured by the capital, surplus or reserve fund, and undivided profits of incorporated mutual savings banks, is void as a tax upon obligations of the Federal Government, since no provision is made for deducting from the measure of the tax the value of such obligations held by the banks, and since the banks, which pay the tax, have no right to be reimbursed.

### STATUTES INVOLVED

The pertinent provisions of the Ohio General Code appear in the Appendix, *infra*, pp. 19-27.

### STATEMENT

Appellant, Society for Savings in the City of Cleveland (hereinafter referred to as the Society), is a mutual savings bank incorporated under the laws of Ohio. Its capital is not divided into shares of stock. (R. 6.)

Ohio intangible property taxes totalling $126,-

115.96 were assessed against the Society annually from 1947 through 1951. (R. 7.) The tax was imposed upon the "capital employed, or the property representing it" in the institution. 4-A Page's Ohio General Code, Section 5408. It was computed by applying a rate of two mills per dollar against the aggregate of the Society's capital, surplus or reserve fund, and undivided profits. Ohio Code, Section 5412. In computing this total, no deduction was made for United States Treasury obligations held by the bank among its assets. Had these obligations been deducted, no taxes would have been payable by the Society.

The taxes were paid by the Society, which, pursuant to state law, then applied to the Tax Commissioner for a certificate abating the assessments. (R. 3-5.) This application was denied by order of the Tax Commissioner, dated July 30, 1952. (R. 5.) A notice of appeal to the Board of Tax Appeals was duly filed by the Society on August 21, 1952. (R. 7.) The Board, by entry dated March 2, 1953, reversed the order of the Tax Commissioner and remanded the case with instructions to issue the certificate of abatement as requested. (R. 18-30.) The Tax Commissioner appealed to the Supreme Court of Ohio, which, on March 10, 1954, reversed the decision of the Board of Tax Appeals and affirmed the order of the Tax Commissioner. (R. 30-48.) The court held, one judge dissenting, that the tax was upon the intangible property interests held by the bank's depositors in its surplus, rather than on the bank itself. It,

therefore, held the tax valid even though the government obligations owned by the bank were not deducted from the measure of the tax. It relied for authority on the cases which permit a state to tax the full value of shares of stock in a corporation even though the corporation holds government obligations among its assets.

The Supreme Court of Ohio allowed the Society's petition for an appeal on June 3, 1954. (R. 1.) On October 14, 1954, this Court entered its order noting probable jurisdiction of the Society's appeal from the decision of the Supreme Court of Ohio, and invited the Solicitor General to file a brief as *amicus curiae*. (R. 54.) By order dated January 31, 1955, the Court ordered that Stanley J. Bowers be substituted as appellee for John W. Peck, formerly Tax Commissioner of Ohio.

## SUMMARY OF ARGUMENT

1. The Ohio statutes levy an intangible property tax upon the "capital employed, or the property representing it" in financial institutions whose capital is not divided into shares of stock. The tax rate is applied against the aggregate "capital, the surplus or reserve fund and the undivided profits" of these institutions, and no provision is made for deducting from this total the value of federal obligations held by the banks. The tax is assessed against and paid by the financial institutions.

Long-settled principles govern the determination of whether this tax is valid. It is unquestioned

that the power of the Federal Government to borrow money on its credit precludes a state from imposing property taxes directly or indirectly upon obligations of the United States. In recognition of this principle, it has been held repeatedly that a state property tax upon the capital or net worth of a corporation holding federal obligations is void unless provision is made for deducting the value of these obligations from the measure of the tax. *E.g., Bank of Commerce* v. *New York City*, 2 Black 620. On the other hand, the states may tax the full value of the shares in such a corporation because a share of stock is a property interest distinct from the assets held by the corporation. *E.g., Van Allen* v. *Assessors*, 3 Wall. 573. And such a tax may be collected from the corporation so long as it is in fact a tax on the shareholders for the payment of which the corporation is entitled to reimbursement from them.

2. Analogizing the depositors of a mutual savings bank to the shareholders of a corporation which has capital divided into shares, the Ohio Supreme Court upheld the tax in this case as one upon "the ownership interests of the depositors" rather than upon the bank itself. It recognized that there is no express statutory authority for the bank to obtain reimbursement from its depositors for the tax payment. It correctly observed that such express authority is unnecessary so long as the bank is in fact entitled to reimbursement. But it nowhere indicated that the bank has any such right. Instead, it emphasized only that the

tax "amounts to" one upon the depositors since, by reducing the bank's assets, it diminishes their "ownership interests" or the amount available to pay interest on their deposits. In this we believe the court erred.

3. A tax upon the corporation always reduces the corporate surplus and is in this sense borne by the shareholders. Nevertheless, this Court's decisions make it clear that a tax upon a corporation is not in legal effect a tax upon the shareholders. And so it is settled that a property tax upon a corporation, without deducting the corporation's federal securities from the measure of the tax, cannot be sustained on the theory that it "amounts to" a tax upon the shareholders. *Home Savings Bank* v. *Des Moines*, 205 U. S. 503. This rule applies here and eliminates the basis for the decision below. Because the tax in this case falls and rests upon the bank, and because there appears to be no right in the bank to obtain reimbursement for the payment from its depositors, the tax is invalid.

## ARGUMENT

### The Ohio Tax Is Imposed upon Obligations of the United States and Is Therefore Unconstitutional

1. The Ohio statutes involved in this case levy an intangible property tax upon the "capital employed, or the property representing it, in a financial institution" whose capital is not divided into shares of stock. Ohio General Code, Sections 5408 and 5628-1 (Appendix, *infra*, pp. 20-21, 25). A rate of two mills per dollar is applied against the aggre-

gate of the "capital, the surplus or reserve fund and the undivided profits" shown by such institutions on an annual report filed with the state tax commission. *Id.*, Section 5412 (Appendix, *infra*, pp. 23-24). No provision is made for deducting from this total the value of obligations of the Federal Government included among the assets of the bank. The tax is assessed in the name of, and is paid by, the bank. *Ibid.* The statute does not expressly state that the bank is to pay the tax on behalf of its depositors, nor is there express authorization for the bank's recovery from its depositors of the tax paid. The question here is whether the tax thus imposed is invalid because its impact falls in part upon federal securities.

As the Supreme Court of Ohio observed (R. 35), the "basic propositions of law" which control this inquiry "seem to be well settled." It is clear, to begin with, that the right of the Federal Government to borrow upon its credit (U. S. Const., Art. I, sec. 8, cl. 2) by implication precludes the imposition of state property taxes upon obligations of the United States. This principle has long been embodied in a federal statute.[1]

While this Court has not since 1828 been faced with an attempt to impose a tax directly upon federal obligations (*Weston* v. *City Council of Charleston*, 2 Pet. 448), numerous cases have dealt with statutes asserted to effect the same result

[1] The provision first appeared in the Act of February 25, 1862, c. 33, 12 Stat. 345, Sec. 2. It is now found in Section 3701, Revised Statutes (31 U. S. C., 1952 ed., Sec. 742).

indirectly. It has been settled by the decisions that property taxes upon the capital or net worth of a corporation holding federal securities among its assets are unconstitutional where no provision is made for deducting the value of these securities from the measure of the tax. *Bank of Commerce* v. *New York City*, 2 Black 620; *Bank Tax Case*, 2 Wall. 200; *Banks* v. *Mayor*, 7 Wall. 16; *Bank* v. *Supervisors*, 7 Wall. 26; *Home Savings Bank* v. *Des Moines*, 205 U. S. 503; *Farmers Bank* v. *Minnesota*, 232 U. S. 516; cf. *New Jersey Ins. Co.* v. *Division of Tax Appeals*, 338 U. S. 665. On the other hand, a state is free to tax the stockholders of a corporation on the full value of their shares of stock even though the corporation holds obligations of the Federal Government among its assets. The cases establishing this rule recognize a share of stock as a property interest separate and distinct from the assets held by the corporation. *Van Allen* v. *Assessors*, 3 Wall. 573; *People* v. *Commissioners*, 4 Wall. 244; *National Bank* v. *Commonwealth*, 9 Wall. 353; *Cleveland Trust Co.* v. *Lander*, 184 U. S. 111; *Des Moines Bank* v. *Fairweather*, 263 U. S. 103; see *McCulloch* v. *Maryland*, 4 Wheat. 316, 436-437. Under these decisions, where the legal incidence of the tax is actually upon the shareholders, collection may be made from the corporation so long as the corporation has "the right to reimbursement for the tax paid from [its] shareholders, either under some express statutory authority * * * or under the general principle of law that one who pays the debt of another

at his request can recover the amount from him." *Home Savings Bank* v. *Des Moines*, 205 U. S. 503, 518; *Citizens Nat'l Bank* v. *Kentucky*, 217 U. S. 443; *Aberdeen Bank* v. *Chehalis County*, 166 U. S. 440; *National Bank* v. *Commonwealth*, 9 Wall. 353; see also *Des Moines Bank* v. *Fairweather*, 263 U. S. 103, 111; *Corry* v. *Baltimore*, 196 U. S. 466, 472.

Examined in the light of the foregoing principles, the Ohio tax appears, in our view, to be invalid. Though characterized by the court below as a tax upon the appellant bank's "owners" (depositors), the tax seems "in practical operation and effect" (*New Jersey Ins. Co.* v. *Division of Tax Appeals*, 338 U. S. 665, 673) to fall and rest upon the bank itself—and thus upon the bank's federal securities.

2. The Supreme Court of Ohio found from the language and scheme of the state statutes a legislative purpose to impose the tax in question upon the depositors in the mutual savings bank rather than the bank itself. Pointing out that the tax is levied upon "the capital employed, or the property representing it, in [the] financial institution," the court concluded that the quoted words describe not the bank's property but "the ownership interests of the depositors" in the bank's surplus (R. 45; see also R. 40, 41-42, 46, 47). Analogizing these "ownership interests" to the interests represented by shares of stock in a corporation,[2] the court

[2] The court did not contrast the two types of ownership interests, though the differences are substantial. A mutual

found controlling the line of decisions permitting state taxation of corporate shares without deduction for federal securities held by the corporation. *Supra*, p. 8.

The Ohio court drew support for this conclusion from the fact that the tax is imposed by the same statute (Ohio General Code, Section 5408) which taxes shares of stock in incorporated and unincorporated financial institutions whose capital is divided into shares. (R. 39-40.) Pursuing its analogy between the proprietary interest of a shareholder and that of a depositor in a mutual savings bank, the court found no basis for imputing to the legislature an "inconsistent intent" to tax the "property of the owners of the financial institution" which divides its capital into shares while "taxing the property of the financial institution" itself where the capital is not divided into shares. The court observed that the tax on shares, like the present tax, is assessed against and paid by the bank. It acknowledged, however, that there is express statutory authorization for reimburse-

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savings bank depositor has no voice in the management of the institution. Management is in the hands of trustees, who are either a self-perpetuating group or are elected by a larger group (not depositors) known as corporators. Consequently, the decision which determines the amount of the surplus is made by individuals not selected by the depositors. Moreover, the size of the surplus is in part determined by state statutes which impose minimum size requirements for the protection of the depositors. 1 Ohio Code, Sec. 710-148e. Another important difference is that, unlike the shareholder, the depositor cannot transfer his interest in the surplus. See, generally, American Institute of Banking, *Savings Banking* (1946), pp. 36-38, 56-66.

ment from shareholders (Ohio General Code, Sections 5672 and 5673, Appendix, *infra*, pp. 25-26), while there is no comparable provision for reimbursement of the mutual bank by its depositors (R. 42). But it noted, citing cases to which we have referred (*supra*, pp. 8-9), that "such a provision is not necessary to enable such a financial institution to secure such reimbursement." (R. 42.)

It is here that we reach the crux of the narrow problem in this case. If in fact the appellant bank paid the Ohio tax as agent of its depositors, and if it were in fact able under Ohio law to secure reimbursement from them for such payment, this brief would not question the validity of the tax. As we read the opinion of the Ohio Supreme Court, however, and as it was read by the dissenting judge (R. 49-50), there appears actually to be no way in which the institution may obtain reimbursement from its depositors for the tax payments. Instead, the majority opinion repeatedly states that the bank's payment, necessarily reducing "the intangible property interests of ownership" possessed by the depositors, may for this single reason be viewed as payment by the depositors. In this, we believe the court was mistaken; and it is on this ground, which appears ultimately to be the sole basis for the decision, that we think it should be reversed.

3. Immediately following its observation that no express provision for reimbursement is necessary, the opinion of the majority below states (R. 43) that "payment by the financial institution of

the tax will always in effect amount to payment by those who are the beneficial owners of such intangible property [the depositors]." This point underlies the remainder of the opinion. There is no suggestion that, apart from this automatic diminution of the depositors' "interests of ownership" through reduction of the bank's assets, there is any way in which the bank may be reimbursed by the depositors. The court refused to extend to mutual institutions like the appellant the statutory provisions for reimbursement available to banks which have shareholders. (R. 42.) Nor did it intimate that an independent right of reimbursement exists under general principles of Ohio law. There is, in short, no indication that the dissenting judge is mistaken when he describes the majority as "[a]dmitting that there is no way for the institution to obtain reimbursement from such depositors for the tax paid on the assets" (R. 50).[3]

The decision below has thus overlooked the distinction, frequently emphasized by this Court in recent years, between the economic burden of a

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[3] While the appellee suggested in his Statement in Opposition to Appellant's Statement of Jurisdiction and Motion to Dismiss or Affirm (pp. 5-7) that the appellant may have a right of reimbursement "under some general principle of law" (p. 6), the opinion below affords no support for the suggestion beyond the brief statement that an express statutory provision for reimbursement is not essential. The extended discussion in the opinion thereafter of the point that payment by the bank amounts to payment by the depositors would be wholly unnecessary if the court considered that the bank possesses a direct right of reimbursement from the depositors. Since the existence of such a right would have brought the case within this Court's decisions upholding state taxes, the failure to specify its existence is persuasive that there is none.

tax and its legal incidence. The legal incidence of a tax is upon the person on whom the tax falls and rests; it is not displaced because the economic burden of the tax may pass to another. *James* v. *Dravo Contracting Co.*, 302 U. S. 134; *Alabama* v. *King & Boozer*, 314 U. S. 1; *Esso Standard Oil Co.* v. *Evans*, 345 U. S. 495.[4] Contrariwise, a tax which is invalid because its incidence falls upon the Federal Government, its property, or obligations will not be saved because the state could have enacted another tax with a different legal incidence but precisely the same economic impact. *Kern-Limerick, Inc.* v. *Scurlock*, 347 U. S. 110.

In the specific context of the problem presented here, the effort to equate legal incidence with economic burden was long ago rejected by this Court. In *Home Savings Bank* v. *DeMoines*, 205 U. S. 503, describing the arguments advanced in support of the tax there, this Court said (p. 519):

> One other consideration only needs to be noticed. It is said that where a tax is levied upon a corporation measured by the value of the shares in it, it is equivalent in its effect to a tax (clearly valid) upon the shareholders in respect of their shares, because, being paid by the bank, the burden falls eventually upon

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[4] The suggestion in the appellee's Statement in Opposition (p. 8) that the tax here can be sustained because of "the complete identity of the bank and its depositors" proves too much. If there were such a "complete identity," the tax would necessarily fail, for the depositors would then own the bank's assets, including its federal securities, and the tax would fall upon their ownership interest.

> the shareholders in proportion to their holdings. It was upon this view that the lower court rested its opinion.

The Court answered (p. 520) that——

> * * * if given the effect claimed, the consideration that the ultimate burden of the tax is distributed upon the shareholders in proportion to their holdings, would have saved the taxes condemned in the *Bank of Commerce* case [2 Black 620] and the *Bank Tax* case [2 Wall. 200], and indeed all taxes assessed upon the property of corporations, and the immunity from state tax of United States bonds owned by corporations would indirectly be absolutely destroyed.

It is clear, then, that whatever its ultimate impact in economic terms, "a tax on a corporation or its property is not the legal equivalent of a tax on the stock, in the names of the stockholders." *Owensboro National Bank* v. *Owensboro*, 173 U.S. 664, 677. A corporation, as a distinct legal entity, is the owner of the corporate assets; the shareholders or others who possess the equity in the corporation do not own those assets. The relationship between the corporation and its shareholders is not, of itself, one of agent and principal. *National Carbide Corp* v. *Commissioner*, 336 U.S. 422, 437-439; *Moline Properties* v. *Commissioner*, 319 U.S. 436; *Burnet* v. *Commonwealth Imp. Co.*, 287 U.S. 415. Although a tax payment by a corporation, like any other disbursement, reduces the corporate assets and reduces the stockholders' equity, *i.e.*,

the fund available for dividends and for distribution on liquidation, any such payment is made by the corporation as its own and out of its own funds; it is not made by the stockholders or on their behalf. Indeed, as we have noted (fn. 4, *supra*, p. 13), any other conclusion would encounter the constitutional objection that the tax is being imposed on the shareholders' ownership of federal obligations.

The court below undertook to distinguish the *Home Savings Bank* case on the ground (R. 46-47) that the tax there was "levied" on the corporation while here it is "levied" on the depositors. We recognize, of course, that the construction of the state statute adopted by the state court will be accepted as determining how the provision was intended to operate. It is equally clear, however, that it rests with this Court to decide for itself whether the statute, as applied by the state, infringes the Constitution. *Kern-Limerick, Inc.* v. *Scurlock*, 347 U.S. 110; *New Jersey Ins. Co.* v. *Division of Tax Appeals*, 338 U.S. 665; *United States* v. *Allegheny County*, 322 U.S. 174, 184; *Richfield Oil Corp.* v. *State Board*, 329 U.S. 69. And forms of words or descriptive labels cannot suffice to destroy an exemption established by the Constitution for the benefit of the United States. *Missouri* v. *Gehner*, 281 U.S. 313, 321; *Macallen* v. *Massachusetts*, 279 U.S. 620, 626; *National Life Ins. Co.* v. *United States*, 277 U.S. 508, 519. So here, the critical point remains that a tax, no matter how it may be characterized for other purposes, is not "levied" in a constitutional sense on a person who, though he

may bear or share the economic burden, has no liability to pay the tax as a tax. *Kern-Limerick, Inc.* v. *Scurlock, supra; Esso Standard Oil* v. *Evans*, 345 U.S. 495; *Alabama* v. *King & Boozer*, 314 U.S. 1.[5] The depositors in this case have no such liability; at most, the only effect of the tax on them, according to the decision below, is to diminish indirectly their interest in the bank's surplus or to reduce the earnings which might be paid to them in the form of interest on their deposits. Since the very point decided by the *Home Savings Bank* case is that such an indirect effect on shareholders does not justify the conclusion that the tax is being imposed upon them, the attempt of the court below to distinguish that case seems inadequate.

We believe, in sum, that the tax in this case, as construed and applied under the decision below, is assessed against the bank, is measured by its assets, and is paid by it. The state statute neither names the bank a tax collector nor provides authorization for it to collect the tax from any source other than its own funds. The tax falls upon the bank and remains there. The result is an invalid levy upon the federal securities held by the bank.

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In our discussion of this case, we have adhered closely to the long-standing distinction between state property taxes upon corporations owning

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[5] See also: *McGoldrick* v. *Berwind-White Co.*, 309 U.S. 33; *Colorado Bank* v. *Bedford*, 310 U.S. 41, 51; and *Fed. Land Bank* v. *Bismarck Co.*, 314 U.S. 95, 99; cf. *Carson* v. *Roane-Anderson Co.*, 342 U.S. 232, 233.

federal securities and similar taxes upon shares of stock in such corporations. We have accepted the position of the court below that for purposes of this distinction the depositors of a mutual savings bank may be viewed as having ownership interests comparable to those of a shareholder in an institution which issues capital stock. But cf. fn. 2, *supra*, pp. 9-10. We have argued only that the reasoning of the court below obliterates the distinction when it upholds a tax upon the corporation on the sole ground that such a tax "amounts to" a tax upon the depositors, despite the absence of any apparent means by which the corporation can seek direct reimbursement from the depositors.

It is impossible to say how much difference the distinction makes in terms of the economics of selling federal obligations. We believe, nevertheless, that the well established rules should be maintained without judicial modification. If the immunity of the United States is to be redefined or judged by new standards, based on complex economic considerations, the task is more appropriate for Congress than for the courts. Cf. *Kern-Limerick, Inc.* v. *Scurlock*, 347 U. S. 110, and *Alabama* v. *King & Boozer*, 314 U.S. 1.

## CONCLUSION

The judgment of the Supreme Court of Ohio should be reversed.

Respectfully submitted,

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FEBRUARY, 1955.

APPENDIX

4-A Page's Ohio General Code Annotated:

SEC. 5324. "Deposits" defined. The term "deposits" as so used, includes every deposit which the person owning, holding in trust, or having the beneficial interest therein is entitled to withdraw in money, whether on demand or not, and whether evidenced by commercial or checking account, certificate of deposit, savings account or certificates of running or other withdrawable stock, or otherwise, * * *

SEC. 5328-1. *Property to be entered on classified tax list and duplicate; exemption.* All moneys, credits, investments, deposits, and other intangible property of persons residing in this state shall be subject to taxation, excepting as provided in this section or as otherwise provided or exempted in this title; * * * non-withdrawable shares of stock of financial institutions and dealers in intangibles located in this state shall be subject to taxation; * * * non-withdrawable shares of stock of financial institutions located outside of this state, belonging to persons residing in this state, shall not be subject to taxation. Such property, subject to taxation, shall be entered on the classified tax list and duplicate of taxable property or on the intangible property tax list in the office of the auditor of state and duplicate thereof in the office of the treasurer of state, as prescribed in this title.

A corporation shall not be required to list

any of its investments in the stocks of any other corporation or in its own treasury stock.

SEC. 5406. [*Deposits required to be returned by financial institutions; exception.*] The deposits required to be returned by financial institutions pursuant to this chapter include all deposits as defined by section 5324 of the General Code to the extent that such deposits are made taxable by section 5328-1 of the General Code, * * *.

SEC. 5407. [*"Financial institution" defined.*] The term "financial institution" as used in this chapter includes every person who keeps an office or other place of business, in this state, and engages in the business of receiving deposits, and of lending money, buying or selling bullion, bills of exchange, notes, bonds, stocks, or other evidences of indebtedness, with a view to profit. * * *

SEC. 5408. [*Taxable property of financial institution, how listed, assesed and taxed.*] All the shares of the stockholders in a financial institution, located in this state, incorporated or organized under the laws of the state or of the United States, the capital stock of which is divided into shares, excepting such as are defined as "deposits" in section 5324 of the General Code, and all the shares of the stockholders in an unincorporated financial institution, located in this state, the capital stock of which is divided into shares held by the owners of such financial institution, and the capital

employed, or the property representing it, in a financial institution the capital of which is not divided into shares, or which has no capital stock, located in this state, shall be listed and assessed at the book value thereof, and taxed in the manner provided in this chapter.

SEC. 5409. *Real estate of financial institution, how and where taxed.* The real estate of a financial institution shall be taxed in the place where it is located, in like manner as the real estate of persons is taxed; but the tax provided for in this chapter shall be in lieu of all other taxes on the other property and assets of such institution.

SEC. 5410. [*Record of names and residence of stockholders and shares of each; inspection.*] There shall be kept in the offices at all times where the business of such financial institution is transacted, a full and correct list of the names and residences of the stockholders therein, and the number of shares held by each, which, at all times during business hours, shall be open to the inspection of all officers who are or may be authorized to list or assess such shares for taxation, or to administer the laws relating to such assessment.

SEC. 5411. [*Annual report of resources and liabilities of banks and financial institutions.*] The cashier or other principal accounting officer of each incorporated bank, the secretary or other principal accounting officer of each other incorporated financial institution, the

cashier, manager or owner of each unincorporated bank, and the manager, owner or owners of each other unincorporated financial institution, shall return to the department of taxation between the first and second Mondays of March, annually, a report under oath, exhibiting in detail, and under appropriate heads, the resources and liabilities of such institution at the close of business on the thirty-first day of December next preceding.

SEC. 5411-1. [*Day for listing and assessing taxable deposits fixed by commission; notice of action.*] On or before the fifth day of December annually, the tax commission of Ohio shall fix the day as of which the taxable deposits in financial institutions shall be listed and assessed. The day so fixed shall be between the first and the thirtieth days of November both inclusive and the action of the commission shall be taken not more than five days after the day so fixed. Notice of such action shall be immediately given to each financial institution and to the auditor of each county by registered mail, and the date so fixed shall be printed or stamped on the forms of return to be made by all financial institutions. The dates herein fixed for the action of the commission are directory merely, and if through inadvertence or mistake such action is not taken at the time herein prescribed, or the notice herein required to be given to a financial institution or a county auditor is not

duly given, the remaining requirements of this chapter and the validity of any assessment made hereunder shall not be affected thereby.

SEC. 5411-2. *Report of financial institution; contents.* The report of each financial institution made pursuant to section 5411 of the General Code shall also show the aggregate balances of the taxable deposits of its depositors, in each county in which the institution maintained an office or offices for the receipt of deposits, at the end of business on the day fixed by the board of tax appeals pursuant to section 5411-1 of the General Code. The report shall show also the names and addresses of all depositors whose deposits were wholly withdrawn from such institution between the day so fixed and the date on which notice of the fixing thereof was received by such institution, or if no such notice was received, then between the day so fixed and the first day of January next following, and the amount of the taxable deposits of each such depositor on the day so fixed.

SEC. 5412. *Tax commissioner to ascertain and assess all taxable shares and capital of financial institution; depositors to be assessed, when.* Upon receiving such report the tax commissioner shall ascertain and assess all the taxable shares of such financial institution, or the value of the property representing the capital employed by such financial institution, not divided into shares, at the aggregate amount

of the capital, the surplus or reserve fund and the undivided profits as shown in such report, and the amount of taxable deposits of such institution in each county in which the institution maintained an office or offices for the receipt of deposits. Such amounts shall be assessed in the name of such financial institution excepting that the amounts of the taxable deposits wholly withdrawn from each such institution within the times mentioned in section 5411-2 of the General Code and separately set forth in such report shall be subtracted from the amount of taxable deposits so assessed and separately assessed in the names of such respective depositors. In the case of an incorporated financial institution all of whose shares constitute deposits as defined in section 5324 of the General Code such assessment of shares shall exclude the capital stock thereof as so shown but shall include the surplus or reserve and undivided profits so shown.

SEC. 5412-1. [*Certification of assessment of financial institution to state and county auditor; auditors to place amounts on tax list.*] On or before the first Monday of May annually, the tax commission of Ohio shall certify to the auditor of state the assessment of each financial institution located in the state and to each county auditor the assessment of each taxable deposit separately assessed in the name of a depositor residing in his county. The auditor of state shall place the amount so certified on the intangible property tax list in his office.

The county auditor shall place the amounts so certified on the classified tax list and duplicate of his county in the names of the depositors represented by such certificates.

SEC. 5638-1. *Tax levy on property on intangible property tax list; rates.* Annual taxes are hereby levied on the kinds and classes of intangible property, hereinafter enumerated, on the intangible property tax list in the office of the auditor of state and duplicate thereof in the office of treasurer of state at the following rates, to wit:

Investments, five per centum of income yield or of income as provided by section 5372-2 of the General Code; unproductive investments, two mills on the dollar; deposits, two mills on the dollar; shares in and capital employed by financial institutions, two mills on the dollar; shares in and capital employed by dealers in intangibles, five mills on the dollar; and moneys, credits and all other taxable intangibles, so listed, three mills on the dollar.

The object of such taxes levied on such property so listed are those declared in section 5414-19 of the General Code.

SEC. 5672. *Taxes a lien on non-withdrawable shares of a financial institution; collection of taxes; penalty.* Taxes assessed on non-withdrawable shares of stock, of a financial institution, shall be a lien on such shares from the first day of January in each year until they are paid.

It shall be the duty of every financial institu-

tion to collect the taxes due upon its shares of stock from the several owners of such shares, and to pay the same to the treasurer of state and any financial institution failing to pay the said taxes as herein provided, shall be liable by way of penalty for the gross amount of the taxes due from all the owners of the shares of stock, and for an additional amount of one hundred dollars for every day of delay in the payment of said taxes.

SEC. 5673. *Financial institution may deduct taxes from dividends of shareholders, when; lien.* Such financial institution paying to the treasurer of state the taxes assessed upon its shares, in the hands of its shareholders respectively, as provided in the next preceding section, may deduct the amount thereof from dividends that are due or thereafter become due on such shares, and shall have a lien upon the shares of stock and on all funds in its possession belonging to such shareholders, or which may at any time come into its possession, for reimbursement of the taxes so paid on account of the several shareholders, with legal interest; and such lien may be enforced in any appropriate manner.

SEC. 5673-1. [*Taxes a lien on deposits and shares of stock of financial institution; payment.*] Taxes assessed on deposits in a financial institution in this state shall be a lien on the deposit of each person as of the day fixed by the tax commission of Ohio for the listing

of such deposits. Taxes assessed on the shares of stock of such an institution, all of whose shares are withdrawable and defined as deposits in chapter four of this title, shall be a lien on such shares so defined as deposits as of the day so fixed. It shall be the duty of every financial institution to pay the taxes on the amount of such deposits and/or withdrawable shares assessed in its name to the treasurer of state and any such institution failing to pay such taxes as herein provided shall be liable by way of penalty for the gross amount of the taxes due on and with respect to all its deposits and withdrawable shares assessed in its name and for an additional amount of one hundred dollars for every day of delay in the payment of such taxes.

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